

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201134001**

Release Date: 8/26/2011

Index Number: 1502.21-00, 9100.22-00

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.
Telephone Number:

Refer Reply To:
CC:CORP:03
PLR-103920-11
Date:
May 24, 2011

Legend

Parent =

Old Parent =

Date 1 =

Date 2 =

Sub =

Company Official =

Tax Professional =

Dear :

This is in response to a letter dated January 6, 2011, submitted on behalf of Parent, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent to file an election under § 1.1502-21(b)(3)(i) to relinquish the entire carryback period for the Parent consolidated group's consolidated net operating loss ("CNOL") for the tax year ending Date 2 (the "Election"). Additional information was submitted in a letter dated May 19, 2011. The material information submitted for consideration is summarized below.

Parent was a subsidiary of the common parent ("Old Parent") of a consolidated group ("Old Parent Group") before Parent was spun off on Date 1 ("Spin-off"). After the Spin-off, Parent became the common parent of a consolidated group ("Parent Group"). Parent Group incurred a CNOL for the tax year ending Date 2. Old Parent has represented that none of the CNOLs of the Parent Group for the tax year ending Date 1 has been, nor will be carried back to the Old Parent Group. In addition, Parent has represented that no corporation which was a member of Parent Group at any time during the tax year ending Date 2 had a separate return year (within the meaning of §1.1502-1(e)) at any time during the carryback period in which it was not a member of Old Parent Group, except for Sub. Sub has represented that it has not, and will not, carry any portion of the CNOL back to a separate return year.

The election was required to be filed by the due date of Parent Group's tax return for the tax year ending Date 2, but for various reasons Parent failed to file a valid election. The period of limitations on assessment under § 6501(a) has not expired for Parent Group's tax year ending Date 2 or any subsequent taxable year. Furthermore, Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time of the request.

Section 1.1502-21(b)(3)(i) provides that a consolidated group may make an irrevocable election to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. The election is made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT." Section 1.1502-21(b)(3)(i) also provides that the statement must be filed with the group's income tax return for the consolidated return year in which the loss arises.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301-9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-

21(b)(3)(i)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent to file the Election, provided Parent shows it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to timely make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under §301.9100-1, until 45 days from the date on this letter, for Parent to file the Election with respect to the relinquishment of the entire carryback period for the CNOL for the tax year ending Date 2, as described above.

The above extension of time is conditioned on the taxpayers' (Parent's and the members of its consolidated group's) tax liability (if any) being not lower, in the aggregate, for all years to which the election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved.

Parent should file the election in accordance with § 1.1502-21(b)(3)(i). Parent Group's return must be amended to attach the election statement required by § 1.1502-21(b)(3)(i). A copy of this letter should be attached to the election statement. Alternatively, if Parent Group files its return electronically, Parent may satisfy this latter requirement by attaching a statement to its return that provides the date and control number of this letter ruling.

We express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made by Parent, Old Parent, Sub, Company Official, and Tax Professional. However, the Director should verify all essential facts. Moreover, notwithstanding that an extension is granted under §§ 301.9100-1 to file the Election,

penalties and interest that would otherwise be applicable, if any, still apply.

This ruling is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)